Baseline / Closure Surveys for Operations, Exercises, and Transformation Related Activities

Craig Walmsley, General Engineer
US Army Claims Service, Europe (USACSEUR)

Purpose

- ✓ **Background on Baseline / Closure Surveys and Claims for**:
  - ➔ CONOPS (Balkans)
  - ➔ Exercises (IR06, IR05, Bulwark 04, Victory Strike, etc.)
  - ➔ For Global Rebasing / Global Restationing (EBS for MK, NSTA, Babadag, etc.)
- ✓ **Identify importance of Global Rebasing / Global Re-stationing (GR2) initiatives as they relate to potential claims against the U.S. Government**
- ✓ ***Seek Army Leadership Awareness and Support***

Environmental Baseline Surveys (EBS)

- ✓ **USAREUR ODCSENG began EBS's in Balkans in 1997**
  - ➔ Defined the "environmental condition" of the site prior to or soon after arrival of US Forces (IFOR)
  - ➔ Continually monitored / updated the "environmental finger-print" of all IFOR/SFOR activities
  - ➔ *Already protected US from over $1M in non-environmental real-estate claims*
- ✓ **USAREUR G-3 conducted EBS's in BU/RO prior to conducting bilateral training exercises (2005 / 2006)**
  - ➔ Documented soil/groundwater conditions at these former HN military facilities (particularly at the up-gradient and down-gradient boundaries).
  - ➔ Funded 100% from "Exercise Budget"…reluctantly

Environmental Closure Reports (ECRs)

- ✓ **USAREUR ODCSENG began conducting ECRs in Balkans in 2000**
  - ➔ Defined the "environmental condition" of the site at time of closure by U.S. Forces
  - ➔ Documented *everything* on CD-ROM's
- ✓ **USAREUR G-3 conducted ECR's in BU/RO at the conclusion of bilateral training exercises (2005, 2006)**
  - ➔ Documented soil/groundwater conditions at these former HN military facilities.
  - ➔ Funded 100% from "Exercise Budget"…reluctantly
  - ➔ Provided reports to Host Nation, USACSEUR

Environmental Baseline Surveys and Environmental Closure Reports

- ✓ **Closures**
  - ➔ Bosnia – 29 sites, FCA Kosovo – 18 sites, FCA
  - ➔ Hungary – 1 site, NATO Macedonia – 1 site, FCA
    - ✓ USACSEUR fully engaged, has input on design of EBS/ECR's; so far ODCSENG has been able to fund USACSEUR's EBS/ECR requirements
    - ✓ NAC waived SOFA's cost-sharing provisions for claims in Macedonia & Albania.
- ✓ **Exercises**
  - ➔ Bulwark 04 – EBS / ECR
  - ➔ Immediate Response 05 – EBS / ECR
  - ➔ Immediate Response 06 – EBS / ECR (Aug 06)
    - ✓ USACSEUR engaged, has limited input on design of EBS/ECR's
    - ✓ No "Regulation or Requirement" to do these…so U'R reluctant to fund these
- ✓ **Transformation**
  - ➔ MK Airfield Romania – WIP
  - ➔ NSTA Bulgaria – WIP
    - ✓ USACSEUR is NOT engaged yet….coordinating w/ USAREUR staff
    - ✓ No "Regulation or Requirement" to do these to protect from Claims, only to protect Health & Safety aspect.

Third - Party Claims

- ✓ **For NATO-SOFA countries:**
  - ➔ Third-parties are loosely defined by SOFA
  - ➔ Claims filed with HN authorities
  - ➔ HN investigates, adjudicates, and pays claim…Sole U.S. input is “scope” certificate! HN Law applies
  - ➔ US then reimburses HN its 75% share
  - ➔ Claimant can appeal decision to local court

- ✓ **For CONOPS countries (no SOFA, No PFP)**
  - ➔ Claims filed directly w/ local JAG “Commission”
  - ➔ US determines merits, adjudicates claim
  - ➔ Can request reconsideration from same Commission

Third - Party Claims (Cont'd)

- **For PFP countries**
  - Has treaty been ratified by HN?…NATO SOFA incorporated by reference
  - If treaty has been signed ***but NOT*** ratified by HN (e.g. Russia)
    - Negotiate!
    - Preference: SOFA(75% US)
    - Default: FCA (100%)
      - Mil-to-mil waiver?
  - Appeals process…???
  - Could SOFA be invoked in middle of a claim?
  - U.S. has signed and ratified PfP Treaty

NATO / SOFA Provisions

- ✓ **NATO / SOFA Governs:**
  - ➔ Cost sharing formula: US tortfeasor? 75% (US) / 25% (HN)
  - ➔ Not Self-implementing: Each country must pass implementing legislation. Not all have done so. Little consistency.
  - ➔ Filing period for claims: Varies by country (90 days in Germany, 5 years in Romania) HN Law applies!
  - ➔ Installation Access: HN access and US post-closure access vary
  - ➔ Applicability of HN Law: German SA changed “Respect” to “Obey”

NATO/SOFA Provisions (Cont'd)

✓ NATO / SOFA Governs - con't:

- ➔ ALL have 3rd-Party Damage Claims
- ➔ Retroactive: HN environmental law changes are common and DO apply to existing pollution
- ➔ North Atlantic Committee Issues: Waived 25% share for Albania and Macedonia (Currently using FCA)

✓ Some Countries have Supplemental Agreement

- ➔ May cause further restrictions to our operations
- ➔ More issues to resolve

Foreign Claims Act & PFP Claims Provisions

✓ Foreign Claims Provisions:

- ➔ No cost-sharing formula: US pays 100%
- ➔ Filing period for claims is 2 years (U.S. law)
- ➔ U.S. Forces JAG Commission determines liability, adjudicates claim, makes offer to claimant
- ➔ Can request reconsideration from same or successor Commission

✓ PFP Claims Provisions:

- ➔ When PFP ratified by HN, then NATO SOFA provisions apply
- ➔ When NOT ratified, then ???

EBS/ECR Summary, Exercises and GR2

- ✓ **Environmental Baseline Surveys**
  - ➔ Required by USAREUR / USAFE
    - ✓ **BUT**, designed primarily designed to protect Health and Safety of troops on scene
  - ➔ ***DOES NOT*** protect US from future claims
    - ✓ No documentation of existing environmental conditions at these sites prior to use by US Forces
  - ➔ 3rd Party Claims
    - ✓ If US doesn't document pre-existing conditions, chances are we "bought" them (Joint and Several Liability)
- ✓ ***NO requirement exists for these comprehensive EBS's***

REMEDIATIONS

- **CONOPS Remediations:**
  - TFF Range (Kosovo) – lead from ranges left in place
  - Camp Odin (Bi-H) KBRS leased facility – POL by Swedes left in place
- **Exercise Remediations:**
  - "You Spill, You Dig" (on-post)
  - "You Spill, USACSEUR Pays" (off-post)
- **GR2 Remediations:**
  - Not yet defined

CONOPS, EXERCISES, GR2

- ✓ **Proposed Fix and Way-Ahead**:
  - ➔ Coordinate and combine the Health/Safety EBS requirements with the Legal/Claims EBS requirements
    - ✓ Only one visit to site for initial, one visit for final – ***SAVES $$$***
    - ✓ Use same contractor or government lab (USACHPPMEUR or Contractor)
    - ✓ Report is more comprehensive and WILL protect US from future 3rd Party Claims
    - ✓ Feed data to GIS for each site
  - ➔ Need to elevate awareness and importance of EBS's to senior leadership
  - ➔ ***Need EBS policy and requirements to be standardized to meet every stake-holders needs***

Partnership – USAREUR & GR2

- ✓ **USAREUR / EUCOM:** Identify all GR2 sites, provide funding for "***robust***" Environmental Baseline Surveys, and accomplish these ***prior*** to occupancy by U.S. Forces

- ✓ **USACSEUR:** Review proposed EBS, insure subsurface contaminants all identified and all possible polluters identified, and all plumes are fully characterized ***prior*** to U.S. Forces use of facility

- ✓ **IMA-E (or Agency "owning" site):** After "puppy becomes a dog", maintain documentation on each site to protect U.S. Forces.

EBS / ECR Photos

Contact Information

Craig Walmsley

USAREUR, OJA, U.S. Army Claims Service, Europe

E-mail: walmsley@hq.hqusareur.army.mil

Phone: DSN: 380-4184
Comm: 011 49 621 730-4184

Fax: DSN 380-4244